

KUTAK ROCK LLP

Loc Pfeiffer (VSB 39632)

Peter J. Barrett (VSB 46179)

Jeremy S. Williams (VSB 77469)

Bank of America Center

1111 East Main Street, Suite 800

Richmond, Virginia 23219-3500

Telephone: (804) 644-1700

Counsel to Shoppes of Beavercreek Ltd.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No. 08-35653-KRH

Chapter 11

Jointly Administered

**RESPONSE AND OPPOSITION OF SHOPPES OF BEAVERCREEK LTD.
TO LIQUIDATING TRUST'S FORTY-FIRST OMNIBUS
OBJECTION TO LANDLORD CLAIMS
(REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)**

Shoppes at Beavercreek Ltd. ("Beavercreek"), by counsel, having filed a proof of claim identified and included in the above captioned *Liquidating Trust's Forty-Second Omnibus Objection to Landlord Claims* (Reduction of Certain Invalid Claims-Mitigation) (the "Objection") filed by Alfred H. Siegel (the "Trustee"), the duly appointed trustee of the Circuit City Stores, Inc., Liquidating Trust (the "Trust"), does hereby oppose the Objection and for its response, states as follow:

1. Circuit City Stores, Inc. and certain of its affiliated entities (collectively, "Debtors") filed a petition for relief on or about November 10, 2008 ("Petition Date"). After the Petition Date, the Debtors continued to be in possession and operation of their businesses.

2. Pursuant to that *Order Pursuant to Bankruptcy Code Section 105(a), 365(a) and 554 and Bankruptcy Rule 6006 Authorizing Rejection of Certain Unexpired Leases of Nonresidential Real Property and Abandonment of Personal Property* [Docket No. 2400], the Debtors rejected that certain Lease dated November 4, 1996 (as amended, modified and/or extended), by and between Beaver creek and the Debtor (the “Lease”) for the premises located at 2720 Towne Drive, Suite 100, Beaver creek, Ohio 45431 (the “Premises”). The Lease was rejected effective February 23, 2009.

3. On or about May 1, 2009, Beaver creek filed a proof of claim number 12771 (the “Claim”), amending claim number 9243 and setting forth a general unsecured claim in the amount of \$721,557.53, representing prepetition sums due under the Lease in the amount of \$43,853.54, as well as rejection damages in the amount of \$677,703.99 (the “Rejection Damages”). The Rejection Damages were calculated as 15% of the remaining term of the Lease, or 1.35 years, pursuant to 11 U.S.C § 502(b)(6). A copy of the Claim is attached as **Exhibit A**.

4. The Objection seeks to disallow and expunge the Claim on the basis that Beaver creek may or may not have engaged in sufficient efforts to mitigate its Rejection Damages. Specifically, the Objection seeks to reduce the Claim from \$721,557.53 to \$43,853.54.

5. The apparent premise for the reduction is the avoidance of all damages incurred by Beaver creek under 11 U.S.C. § 502(b)(6) or all Rejection Damages incurred under the Lease.

6. Beaver creek did engage in substantial mitigation efforts, including the engagement of a broker to market and rent the Premises. Despite such efforts, Beaver creek was unable to locate a suitable tenant for the Premises prior to August 30, 2010.

7. Given that the replacement tenant rented the Premises after the 1.35 years which comprise the Rejection Damages period, Beaver creek remains entitled to the full amount of Rejection Damages set forth in the Claim.

8. For additional information regarding the mitigation efforts of Beaver creek, the Liquidating Trustee may contact:

Richard Wolney
Schottenstein Property Group
c/o Jeremy S. Williams, Esq.
Kutak Rock LLP
1111 East Main Street, Suite 800
Richmond, Virginia 23219

Additional contact information for Beaver creek is available upon request.

9. Based on the above, the Objection should be denied.

WHEREFORE, Beaver creek respectfully request that this Court deny the relief requested in the Objection as it relates to the Claim; deem the Claim allowed; and grant such other and further relief as is just and proper.

Dated: June 26, 2012
Richmond, Virginia

Respectfully submitted,

/s/ Jeremy S. Williams

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Counsel to Shoppes of Beavercreek Ltd.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 26, 2012, a true and exact copy of the foregoing was served via ECF notification to the following:

Jeffrey N. Pomerantz, Esq.
Andrew W. Caine, Esq.
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard
Los Angeles, CA 90067-4100

Lynn L. Tavenner, Esq.
Paula S. Beran, Esq.
Tavenner & Beran, PLC
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

/s/ Jeremy S. Williams

Counsel

B 10 Official Form 10 (12/07)

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA

PROOF OF CLAIM

Debtor against which claim is asserted: (Check only one box below)

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Circuit City Stores, Inc. (Case No. 08-35653) | <input type="checkbox"/> CC Distribution Company of Virginia, Inc. (Case No. 08-35659) | <input type="checkbox"/> Abbott Advertising, Inc. (Case No. 08-35665) |
| <input type="checkbox"/> Circuit City Stores West Coast, Inc. (Case No. 08-35654) | <input type="checkbox"/> Circuit City Stores PR, LLC (Case No. 08-35660) | <input type="checkbox"/> Mayland MN, LLC (Case No. 08-35668) |
| <input type="checkbox"/> InterTAN, Inc. (Case No. 08-35655) | <input type="checkbox"/> Circuit City Properties, LLC (Case No. 08-35661) | <input type="checkbox"/> Patapsco Designs, Inc. (Case No. 08-35667) |
| <input type="checkbox"/> Ventoux International, Inc. (Case No. 08-35656) | <input type="checkbox"/> Orbyx Electronics, LLC (Case No. 08-35662) | <input type="checkbox"/> Sky Venture Corporation (Case No. 08-35668) |
| <input type="checkbox"/> Circuit City Purchasing Company, LLC (Case No. 08-35657) | <input type="checkbox"/> Kinzer Technology, LLC (Case No. 08-35663) | <input type="checkbox"/> XSStuff, LLC (Case No. 08-35669) |
| <input type="checkbox"/> CC Aviation, LLC (Case No. 08-35658) | <input type="checkbox"/> Courchevel, LLC (Case No. 08-35664) | <input type="checkbox"/> PRAHS, INC. (Case No. 08-35670) |

NOTE: This form should not be used to make a claim for administrative expenses arising after the commencement of the case. A request may be filed pursuant to 11 U.S.C. § 503(a).

Name of Creditor (the person or other entity to whom the debtor owes money or property):
SHOPPES OF BEAVERCREEK LTD

☒ Check this box to indicate that this claim amends a previously filed claim

Name and address where notices should be sent:

NameID: 4526980

PackID: 292155

Court Claim Number: 9243

SHOPPES OF BEAVERCREEK LTD

Attention: KIMBERLY A. PIERRO, ESQ.

KUTAK ROCK LLP

1111 E. MAIN STREET, STE 800

RICHMOND, VA 23219

(if known)

Filed on: 1/30/09

Telephone number: (614) 449-4831

Name and address where payment should be sent (if different from above):

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: **\$ 721,557.53**

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount:

Specify the priority of the claim.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: **pre-petition rent and 502(b)(6)**
(See instruction 12 on reverse side.)

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtors business.

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

☐ whichever is earlier — 11 U.S.C. § 507(a)(4).

4. Secured Claim (See instruction 14 on reverse side)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: \$ _____ Annual Interest Rate _____%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

☐ Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(5).

☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(d)(7)

☐ Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

Amount entitled to priority: \$ _____

6. Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)

*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:

FOR COURT USE ONLY

Date:

4/30/09

Signature: the person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Kimberly A. Pierro, Counsel for Shoppes of Beaver Creek Ltd.

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. § 152 and 3571

EXHIBIT

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A

In re Circuit City Stores, Inc.

Proof of Claim #9243 as Amended

Pre-petition rent:	\$ 43,853.54
Damages pursuant to 11 U.S.C § 502(b)(6):	
15% of remaining term of lease: 1.35 years	<u>\$ 677,703.99</u>
Total:	\$ 721,557.53